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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,353	04/13/2004	Phillip C. Watts	028058-000110US	4721
20350 7590 03/31/2011 KILPATRICK TOWNSEND & STOCKTON LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834				
EXAMINER				
MOWLA, GOLAM				
ART UNIT		PAPER NUMBER		
1723				
NOTIFICATION DATE		DELIVERY MODE		
03/31/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Docket@kilpatricktownsend.com
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Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/823,353

Applicant(s)

WATTS, PHILLIP C.

Examiner

GOLAM MOWLA

Art Unit

1723

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 March 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 8-16 and 24-38

Claim(s) withdrawn from consideration: 17-22

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____

/Alexa D. Neckel/
Supervisory Patent Examiner, Art Unit 1723

/G. M./
Examiner, Art Unit 1723

Continuation of 11, does NOT place the application in condition for allowance because: Applicant argues that the specification implicitly supports that the blocks are substantially rigid (see Remarks, page 11). The Examiner respectfully disagrees. Instant application as originally filed fails to disclose anything as to whether the first and second blocks are substantially rigid.

On page 11 of Remarks, Applicant argues that the fact that the second thermal modules are formed from bifurcated blocks flexibly coupled together strongly implies that the modules are rigid.

The examiner respectfully disagrees. Just because the second thermal module is bifurcated, that does not imply that the second thermal module is rigid. One skilled in the art realizes that any flexible block can as well be bifurcated to make two separate portions.

In paragraph bridging pages 12 and 13 of Remarks, Applicant argues that that fact that thermal module 7 is not bifurcated does not suggest module 7 is flexible. Applicant further argues that all four of the thermoelectric generators modules 11 shown in figures can have flat faces in full contact with flat faces of thermal module 7 even though thermal module 7 is substantially rigid.

The examiner respectfully disagrees. There is nowhere in the specification applicant discloses that the block 7 is substantially rigid. Just because all four of the thermoelectric generators modules 11 shown in figures can have flat faces in full contact with flat faces of thermal module 7 that does not imply that block 7 is substantially rigid. Any flexible block can have flat faces.

Applicant further goes on to argue that the thermal modules are made of metal because there is need for good thermal conductivity, and therefore the blocks are rigid (Remarks, page 13).

The examiner respectfully disagrees. DeBucs (US 3,607,444) teaches that the blocks can be formed of metal such as spring steel, which is flexible (col. 4, lines 50-75). "Block" is defined as "a solid piece of something" (<http://define.com/block>). Since the element 16 of DeBucs is made of solid spring steel material, it reads on instant second block.

Applicant further goes on to argue that the thermal elements of DeBucs are thin-walled tubes and as evident from figure 2 of instant application, the blocks are clearly thick walled and are clearly expected to be rigid (Remarks, page 13).

The examiner respectfully disagrees. Applicant's arguments is based on only assumptions because it is not clear to examiner how the applicant can conclude that the blocks are thick walled just by looking at figure 2. One skilled in the art knows that the metal is flexible up to certain thickness. Instant disclosure does not state any thickness.

Applicant goes on to further argue that the specification suggests lapping or matching [sic] of parts to achieve good contact and therefore the blocks are rigid because machining and lapping are manufacturing processes performed on rigid materials.

The examiner respectfully disagrees. As pointed out by the application, "lapping or matching" is done only to achieve good contact, but that does not disclose anything about the rigidity of the blocks.